IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11017 of 2004

Between:

P. Mahendra Babu, S/o. P. Venugopal,
O/o. Deputy Executive Engineer, A.P. State Housing Corporation Ltd.
Proddatur, Kadapa District.

..... PETITIONER

AND

1 The District Collector/Disciplinary Authority A.P. State Housing Corporation Ltd. Chittoor.
2 The District Manager, A.P. State Housing Corporation Ltd. Chittoor.
3 The District Manager, A.P. State Housing Corporation Ltd. Kadapa.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ, Order or direction, more particularly one in the nature of Writ of Certiorari calling for the records relating to the Provisional Conclusion Order Rc.No. 533/2003/AM dated 16-6-2004 from the file of the 1st respondent and after perusing the same, quash the said order dated 16-6-2004 by declaring it as arbitrary, illegal and violative of the Principles of Natural Justice and with all other consequential benefits, menetary and otherwise, and pass

Counsel for the Petitioner:MR.V.JAGAPATHI

Counsel for the Respondents: MR.V.CH.NAIDU

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 11017 of 2004

O R D E R:

The present writ petition is filed questioning the show-cause notice dated 16.6.2004 in Rc.No.533/2003/AM where under the petitioner was directed to submit the written explanation for the said show-cause notice.

For not settling the accounts of S.C. Blocks Production Centre at Palamaner and not handing over the stock registers and recovery particulars of the production centre, disciplinary proceedings have been initiated against the petitioner under the C.C.A. Rules. The petitioner submitted his written explanation for the charges levelled against him. As a prima facie case of temporary misappropriation of cement was established against the petitioner, a regular departmental enquiry was conducted by appointing an Enquiry Officer. The Enquiry Officer after conducting the enquiry submitted

the report. Having accepted the said report, the disciplinary authority came to the conclusion that the petitioner is liable for punishment of dismissal from service and, therefore, the present impugned proceedings have been issued. Questioning the same, the present writ petition is filed.

Learned counsel for the petitioner Sri V. Jagapathi contended that the Enquiry Officer did not fix the liability with regard to the misappropriation of costs of 735 cement bags in respect of the petitioner herein and as a matter of fact a categorical finding has been given that it was the person-in-charge of the godown who received the stock and, as the disciplinary authority was deviating from the findings of the Enquiry Officer an opportunity shall be given to the petitioner, but no such opportunity was given and the enquiry report was not furnished to the petitioner and that the charge against the petitioner with regard to misappropriation of cost of 735 cement bags is held to be not proved and therefore the impugned proceedings were issued completely ignoring the principles of natural justice. Hence, he prays to quash the same.

On the other hand, learned counsel for the respondents contended that along with the show-cause notice the enquiry report has been submitted and that there is no need to give any notice and therefore there are no grounds to interfere with the impugned proceedings.

Charge No.1 against the petitioner is that he did not handover the charge of S.C. Blocks production centre, Palamaner in spite of reminders from the concerned authority. The 2nd charge against him is that due to non-settlement of production centre, the present Assistant Engineer could not issue the S.C. Blocks to the beneficiaries and further production of S.C. Blocks could not be produced; hence the entire work in production centre at Palamaner is held up. The 3rd charge is that he misappropriated 735 bags of cement worth of Rs.91875/- and the same was used for his personal benefits and he remitted the said amount on 19.7.03 after one year

and temporarily misappropriated the said amount. A regular departmental enquiry was conducted. The Enquiry Officer after affording reasonable opportunity, submitted the report to the disciplinary authority. The report of the Enquiry Officer is not seriously challenged, so also it is not stated that in conducting the enquiry the enquiry officer has not followed the principles of natural justice or that the petitioner was not permitted to adduce any evidence in the enquiry. But, the contention of the learned counsel for the petitioner is that as the 3rd charge of misappropriation has not been attributed to the petitioner, the disciplinary authority has to record reasons and before issuing show-cause notice, he has to furnish the enquiry officer's report to the delinquent and thereafter he should issue a show-cause notice and that has not been followed.

Insofar as charges 1 and 2 are concerned, the delinquent himself admitted the said charges. So there is no dispute about those charges. It is not the case of the petitioner that under threat or coercion he was forced to admit the charges 1 and 2.

Coming to charge No.3, he did not admit this charge. He categorically stated that the finding of the Enquiry Officer is that the petitioner did not misappropriate the amount and it is the person-in-charge of the godown who received the stock. The finding of the enquiry officer would also indicate that the cost of 735 bags of cement worth Rs.91875/- was temporarily misappropriated.

Learned counsel for the petitioner relied upon a decision of the Supreme Court in **Managing Director, ECIL v. B. Karunakar** wherein their Lordships held:

> The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity it the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its

> conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record".

Though the petitioner stated that the enquiry report is not submitted, but a perusal of the proceedings shows that the enquiry report was enclosed to the show-cause notice. The contention of the learned counsel for the petitioner that after issuing notice the respondents have to serve a copy of the enquiry report is totally unacceptable. Having considered the report and after recording the reasons if the disciplinary authority differs with the findings of the enquiry officer, he can as well issue a show-cause notice which is a reasonable opportunity to make representation. When the disciplinary authority is differing with the findings of the enquiry officer, in such a case the enquiry report has to be necessarily issued to the delinquent so that he could be in a position to give proper explanation. Even the above decision relied upon by the learned

counsel for the petitioner only indicates that the delinquent employee has a right to receive the copy of the enquiry report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. The guilt or innocence of the employee has not been decided in this case. It is only a show-cause notice calling upon the petitioner to give explanation. Normally this court will not interfere with the show-cause notice of imposing proposed punishment. The law is well settled that it is for the appropriate authority to take a decision once the charge against the delinquent is established. Therefore, it is for the disciplinary authority to take appropriate decision basing on the charges levelled against him. At this stage as no punishment is imposed, the question of comparing the said punishment with reference to the charges does not arise. The person who issued the show-cause notice has got jurisdiction to issue the show-cause notice. It does not suffer from any jurisdictional errors.

The writ petition is totally devoid of any merit. It is accordingly dismissed

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K.C. BHANU, J.

Dt. ---07—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Collector/Disciplinary Authority A.P. State Housing Corporation Ltd. Chittoor.
2 The District Manager, A.P. State Housing Corporation Ltd. Chittoor.
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